

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Ms. L, et al.,

Plaintiffs,

vs.

U.S. Immigration and Customs
Enforcement, et al.,

Defendants.

Case No. 3:18-cv-428-DMS

Honorable Dana M. Sabraw

M.M.M., on behalf of his minor child,
J.M.A., et al.,

Plaintiffs,

vs.

Matthew G. Whitaker, Acting
Attorney General of the United States,¹
et al.,

Defendants.

Case No. 3:18-cv-1832-DMS

Honorable Dana M. Sabraw

**ORDER ON FURTHER
CLARIFICATIONS TO
SETTLEMENT AGREEMENT
OF NOVEMBER 15, 2018**

February 6, 2019

¹ Pursuant to Federal Rule of Civil Procedure 25(d), the Court has substituted the current Acting Attorney General as the Defendant in this case.

1 The Court having considered objections filed by legal service providers for
2 children who sought clarifications to the settlement agreement at the fairness hearing
3 on November 15, 2018; and the Court having invited the parties and the objectors to
4 meet and confer about such clarifications; and the parties and the objectors having
5 met, conferred, and reached a common understanding of certain provisions of the
6 settlement, the Court hereby approves the following further clarifications to the
7 settlement agreement approved on November 15, 2018:

8 **Paragraph 1.a.**

9 The first sentence of Paragraph 1(a) of the settlement agreement states: “*Ms.*
10 *L* class members and *M.M.M.* agreed class members who are not currently detained
11 in DHS custody (and are not currently in HHS custody) and who have been issued
12 Notices to Appear (NTAs) will not be removed by DHS prior to issuance of a final
13 removal order in their resulting removal proceedings conducted under Section 240
14 of the Immigration and Nationality Act (INA).” This provision applies to the
15 following hypothetical situations as clarified below:

16 Hypothetical #1: A parent and child are reunited in the community. The child
17 was issued an NTA while in shelter. The parent was not issued an NTA because the
18 parent was released for reunification before having a credible fear interview. Does
19 the child remain in Section 240 proceedings?

20 Clarification #1: Yes.

21 Hypothetical #2: A parent and child are reunited in the community. The child
22 was issued an NTA while in shelter. The parent was not issued an NTA because the
23 parent received a negative credible fear determination and the parent has not yet had
24 his or her negative determination reviewed pursuant to the settlement agreement.
25 Does the child remain in Section 240 proceedings?

1 Clarification #2: No. The parent would have the negative credible fear
2 determination reviewed pursuant to Paragraph 1(d) of the settlement agreement. The
3 child would be reprocessed for expedited removal so that the child can be
4 interviewed with the parent and treated as the parent's dependent. If credible fear is
5 found for either the parent or the child, both would be placed in Section 240
6 proceedings.

7 Hypothetical #3: A parent and child are reunited in the community. The child
8 was issued an NTA while in shelter. The parent was not issued an NTA because the
9 parent received a negative credible fear determination, but the parent's negative
10 credible fear determination is pending review by an immigration judge. Does the
11 child remain in Section 240 proceedings?

12 Clarification #3: If the parent's negative credible fear determination is
13 pending review by an immigration judge then the parent does not yet have a final
14 expedited removal order and Paragraph 1(d) of the settlement does not apply. The
15 child would remain in Section 240 proceedings while the parent's negative credible
16 fear determination is pending review by an immigration judge. If the parent's
17 negative credible fear determination is affirmed by the immigration judge following
18 reunification, the child would remain in Section 240 proceedings unless the parent
19 seeks further review pursuant to Paragraph 1(d) of the settlement. If the parent does
20 seek further review under the settlement, then Paragraph 1(d) would apply as
21 described in hypothetical #2 above, including that the child would be reprocessed
22 for expedited removal so that the child can be interviewed with the parent and treated
23 as the parent's dependent.

24 Hypothetical #4: A parent and child are reunited in the community. The child
25 was issued an NTA while in shelter. The parent was issued an NTA after receiving
26 a positive credible fear determination in the initial determination from USCIS or on
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1 review by an immigration judge. Would both parent and child stay in 240
2 proceedings?

3 Clarification #4: Yes.

4 **Paragraph 1.a., continued**

5 The last sentence of Paragraph 1.a. of the settlement agreement states:
6 “*M.M.M.* agreed class members who have not been reunified with their parent(s) as
7 of the effective date of this agreement will be afforded existing procedures for
8 unaccompanied alien children pursuant to governing statutes and regulations,
9 including but not limited to Section 240 removal proceedings, unless and until they
10 are reunified with a parent, in which case the procedures described below will
11 apply.”

12 This sentence refers to a child’s reunification with a parent or parents in the
13 *Ms. L* class. A child’s reunification with a parent outside the *Ms. L* class does not
14 trigger the application of the settlement. Such a child remains in Section 240
15 proceedings if the child is already in such proceedings.

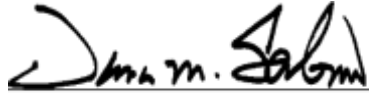
16 **Preamble and Paragraph 8**

17 Both the preamble and Paragraph 8 of the settlement agreement include
18 language through which class members waive certain claims. Paragraph 8 states the
19 waiver as follows: “Class members may either pursue the relief described in this
20 agreement or elect prompt removal, but may not pursue any other immigration- or
21 asylum-related injunctive, declaratory, or equitable relief based on the allegations or
22 claims made in any of the *Ms. L*, *M.M.M.*, or *Dora* complaints filed in any court
23 accruing as of the date this plan is approved by the Court, including statutory
24 claims.”
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1 Neither this provision nor the similar language in the preamble to the
2 settlement limits in any way the defenses that a parent or child class member may
3 assert in Section 240 proceedings.

4 It is so ordered.

5 Dated: February 8, 2019

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7 Hon. Dana M. Sabraw
8 United States District Judge
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